

Remarks/Arguments:

I. Status

The Office Action dated September 8, 2004, has been carefully reviewed. Claims 1-19 are pending in this application. Claim 1 has been amended to more particularly define the invention. Reconsideration of this application is respectfully requested.

II. 35 U.S.C. § 102 Rejection.

Claims 1, 2, 6, 8, 9, 12, 14, 15 and 18 were rejected under 35 U.S.C. § 102 as being anticipated by U.S. Patent No. 5,115,888 to Schneider (hereinafter "Schneider"). Reconsideration of these claims in view of the following remarks is respectfully requested.

The Present Invention

The present invention comprises a system and method for a retail terminal facilitating the checkout of items sold on a basis of the weight of the item. Items, such as several apples, are placed on a scale and one of the items, an apple, is scanned to permit the appropriate price per weight to be applied to the items present on the scale. A first weight measurement is taken of the items, the apples, on the scale. This first weight measurement may be taken while one of the apples is removed from the scale to facilitate scanning. A second weight measurement is taken of the items, the apples, on the scale upon actuation of a trigger possibly associated with returning the item removed for scanning to the scale.

While not claimed in claims 1, 8 or 14, the items, the apples, are then placed in a bag present on a second scale. Although not claimed in claims 1, 8 or 14, a weight measurement has been taken by the second scale before the apples are placed in the bag and a second weight measurement is taken by the second scale after the items are placed in the bag to protect against fraud. For example, the first weight measurement taken by the second scale might indicate the weight of the empty bag and the second weight measurement taken by the second scale might indicate the combined weight of the bag and the apples.

The disclosure of the patent application indicates that second items, for example oranges, could be placed on the first scale; one item, an orange, may be scanned; a weight measurement of the second items, the oranges with or without the removed orange, may be taken by the first scale; and, a second weight measurement of the second items, the oranges hopefully with the removed orange, may be taken by the first scale. The oranges are then moved to the bag on the second scale and a weight measurement of the bag, apples and oranges may be taken by the second scale and compared to the weight measurement of the bag and the apples taken by the second scale to protect against fraud.

The present invention seeks to ensure that the price calculated for items sold on a price per weight basis is calculated using the actual weight of the items being purchased rather than some reduced weight arising from removal of one of the items from a scale for scanning.

Schneider

Schneider provides a self serve checkout system also configured to facilitate sale of items on a price per weight basis. Schneider provides a first scale where bar coded

items are deposited and a second scale where products without bar coded labels are initially deposited. (Schneider at Abstract). Items with bar codes (apparently perceived to be sold on a per item, not price by weight, basis) are scanned and then placed in a bag on the second scale. Items without bar codes, presumably sold on a price per weight basis, are placed in a first scale, identified, weighed and a price per weight is multiplied by the weight measurement taken by the first scale to determine a price for the items. The items without bar codes are then place in the bag on the second scale along with items previously scanned or weighed. Weight measurements may be taken on the second scale prior to and after placement of the items without bar codes in the bag on the second scale to prevent fraud.

Discussion Re: Patentability of Claim 1

1. Claim 1

Claim 1, as currently amended, recites:

A method of operating a retail terminal comprising the steps of:
placing items to be weighed on a scale of the retail terminal;
scanning one item of the items via a scanner of the retail terminal;
obtaining a first weight measurement of the items on the scale
upon successful scanning of the one item; and
obtaining a second weight measurement of the items on the scale
upon actuation of a trigger.

Claim 8 recites:

A retail terminal comprising:
a processor;
memory in communication with said processor and containing
program instructions operative to control said processor;
a scale in communication with said processor; and
a scanner in communication with said processor;
said scale operative to obtain a first weight measurement of items
placed on said scale;

said scanner operative to obtain machine-readable data from one of the items; and

said scale further operative to obtain a second weight measurement of the items on said scale upon receipt of a trigger signal.

Claim 14 recites:

A checkout system comprising:

a processor;

a scale in communication with said processor and operative to obtain weight measurement of items placed on said scale;

a scanner in communication with said processor and operative to read bar codes; and

memory in communication with said processor and containing program instructions which, when executed by said processor, causes said processor to:

obtain a first weight measurement from said scale of items placed on said scale;

obtain a bar code associated with one of said items from said scanner; and

obtain a second weight measurement from said scale of the items placed on said scale upon actuation of a trigger.

Thus claims 1, 8 and 14 all recite obtaining a first weight measurement of items on a scale and obtaining a second weight measurement of the items on the scale.

2. Schneider Does Not Disclose Obtaining First and Second Weight Measurements of Items on a Scale

The Office action alleged that Schneider disclosed:

Allowing placement of items to be weighed on a scale 23, of the retail terminal (figure 1). Allowing scanning of one item of the items via a scanner 114, of the retail terminal. Obtaining a first weight measurement (at packing scale 23) of the items on the scale upon successful scanning of the one item; and obtaining a second weight measurement (at bagging scale) upon actuation of a trigger.

(Office Action at page 2). Respectfully, while Schneider has been properly characterized, that characterization does not indicate that Schneider teaches every

element and limitation of any of the independent claims. Quite simply the characterization of Schneider indicates that Schneider obtains a first weight measurement of items on a first scale and a second weight measurement of items and possibly something else on a second scale. Claims 1, 8 and 14 require the first and second weight measurements to be taken of one type of item on one scale. As characterized by the Examiner, Schneider does not take two weight measurements of the same type of items on the same scale as required by claims 1, 8 and 14. As characterized by the Examiner, Schneider takes a weight measurement of apples on a first scale and apples and a bag or apples, oranges and a bag on a second scale.

The claim limitations found in claims 1, 8 and 14 could not be satisfied even if one were to look at only the bagging scale of Schneider. While a first and a second weight measurement are taken by the bagging scale (two measurements on the same scale) these measurements are not of the same type of item as required by claims 1, 8 and 14. Following the example utilized above, the bagging scale of Schneider takes a first weight measurement of an empty bag or a bag and oranges and a second weight measurement of a bag and apples or a bag, apples and oranges. Using the same example, claims 1, 8 and 14 require two weight measurements to be made on the same scale of apples, not one weight measurement of apples and one weight measurement of apples and oranges.

Anticipation under 35 U.S.C. § 102 is proper only if the prior art reference discloses each and every element of the claim. Since Schneider does not disclose

each and every element of Applicants' claims 1, 8 or 14, Schneider does not anticipate claims 1, 8 or 14.

In the event the Examiner chooses to maintain this rejection of claim 1, the Examiner is respectfully requested to provide a citation to the element in Schneider that allegedly teaches the limitation of a first and second weight measurement taken of the same type of item by the same scale. (See e.g. 37 CFR 1.104 wherein the Examiner is required "designated as nearly as practicable" the particular part of a prior art that is relied upon).

4. Conclusion

For any or all of the foregoing reasons, it is respectfully submitted that the rejections of claims 1, 8 and 14 as being anticipated by Schneider has been successfully traversed, and the Applicants respectfully submit that the rejections of claims 1, 8 and 14 under 35 U.S.C. § 102 should be withdrawn.

Discussion Re: Patentability of Claims 2, 6, 9, 12, 15 and 18

Claims 2, 6, 9, 15 and 18 were rejected as being anticipated by Schneider. All of claims 2, 6, 9, 15 and 18 include limitations discussed above with respect to claims 1, 8 and 14.

Specifically, claims 2 and 6 depend from claim 1 and include all of the limitations of claim 1. Therefore, claims 2 and 6 are patentable over Schneider which does not contain all of the elements and limitations of claim 1 as discussed above.

Claim 9 depends from claim 8 and includes all of the limitations of claim 8.

Therefore, claim 9 is patentable over Schneider which does not contain all of the elements and limitations of claim 8 as discussed above.

Claims 15 and 18 depend from claim 14 and include all of the limitations of claim 14. Therefore, claims 15 and 18 are patentable over Schneider which does not contain all of the elements and limitations of claim 14 as discussed above.

For at least the foregoing reasons, it is respectfully submitted that the rejection of claims 2, 6, 9, 15 and 18 as being anticipated by Schneider has been successfully traversed, and the Applicants respectfully submit that the rejection of claims 2, 6, 9, 15 and 18 under 35 U.S.C. § 102 should be withdrawn.

In the event the Examiner chooses to maintain the rejection of claims 2, 6, 9, 15 and 18 under Schneider, the Examiner is respectfully requested to provide some indicia as to what elements in Schneider allegedly teach the claimed elements/steps. As noted above, 37 CFR 1.104 requires some degree of specificity.

III. 35 U.S.C. § 103 Rejection.

Claims 3-5, 7, 10, 11, 13, 16, 17 and 19 were rejected under 35 U.S.C. § 103 as being unpatentable over Schneider in view of U.S. Patent No. 5,640,002 to Rupert et al. (hereinafter "Rupert"). Reconsideration of these claims in view of the following remarks is respectfully requested.

1. All claims Depend From Non-Obvious Independent Claims.

MPEP § 2143.03 states that if an independent claim is non-obvious, then any claim depending therefrom is non-obvious. Claims 3-5 and 7 depend directly or indirectly through an intermediate claim from independent claim 1. Claims 10, 11 and 13 depend from independent claim 8 either directly or through an intermediate claim. Claims 16, 17 and 19 depend either directly or indirectly through intermediate claims from independent claim 14.

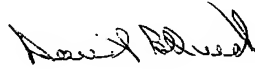
Independent claims 1, 8 and 14 recite limitations that are not present in Schneider as discussed above. The Office action relies upon Rupert for teaching the actuation of a trigger comprising a user-actuation of an actuator, a timer having a time duration, and an audio indication of the successful obtaining of a weight measurement (Office Action at page 4). Rupert, like Schneider, does not appear to teach a first weight measurement of items on a scale and obtaining a second weight measurement of the items on the scale. Therefore, even accepting the combinations as proper, which is not admitted, the proposed combination does not arrive at the claimed invention of independent claims 1, 8 and 14. Accordingly, under MPEP § 2143.03, claims 3-5, 7, 10, 11, 13, 16, 17 and 19 are patentable over the prior art.

V. Conclusion

Applicant respectfully requests entry of the amendments and favorable consideration of the application.

A prompt and favorable action on the merits is requested.

Respectfully Submitted,



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